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OCTOBER TERM, 1963

NO. 549

ESTATE OF PETER CHRISTOFF, DECEASED

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Is the Supreme Court of Pennsylvania deprived of its right to grant recognition on the principles of comity to a decree of a Greek court whereby a Greek child acquired in Greece the status of an adopted son of a United States citizen domiciled in Pennsylvania, solely because in the course of the adoption proceedings the adopting father was permitted by the Greek court, pursuant to his own request, to appear before a Greek consul in the United States for the limited purpose of declaring his consent to the adoption?

STATEMENT OF THE CASE

1. The following additional facts are necessary to an adequate statement of the case.

The decedent, Peter Christoff, died a resident of Allegheny County, Pennsylvania, on August 12, 1960, leaving a will dated the 18th day of June, 1948, under which he left the residue of his estate to his nephew, the petitioner herein, a resident of Czechoslovakia (R. 2a-4a, 620a).

On January 24, 1955, the decedent executed a Power of Attorney prepared for him by the scrivener of his will by virtue of which he appointed a Greek attorney to appear for and represent him in adoption proceedings in Greece for the adoption of his grandnephew, the respondent herein (Peter Ex. 2, R. 497a-499a, 36a). Pursuant to this Power of Attorney, Greek counsel prepared and presented the decedent's petition for the adoption of respondent to the First Instance Court of Edhessa, Greece (Peter Ex. 9, R. 538a-541a, 107a). The Petition stated, inter alia:

> "In view of the fact that I reside abroad and I am ill, I cannot appear before your Court to declare personally my consent to the adoption as required by the law. I, therefore, beg that the Greek Consul General in Chicago, Ill., U.S.A., be appointed judge of instruction (sic) so that I may declare before him (in his above capacity) my consent to the adoption." (R. 539a)

The proceedings for the adoption of respondent continued in this Greek court and on April 7, 1955, testimony was taken as to the benefit and advantage of the

adoption to respondent and respondent's parents appeared in open court and personally declared their consent to the adoption (Peter Ex. 9, R. 549a-551a, 107a).

Thereafter, by Interlocutory Order No. 76 of 1955, the Greek court, upon consideration of the aforesaid Petition and the pertinent provisions of the Greek Codes, first determined that the consent of the decedent to the adoption must be received by the court and that under the controlling authorities the Greek consul in Chicago might properly be appointed to receive such consent. It concluded its order by appointing him "judge of introduction" with instructions to forward his report after receiving the consent of the decedent to the adoption of respondent (Peter Ex. 9, R. 552a-557a, 107a).

On June 10, 1955, the decedent appeared in Chicago before the Greek consul who then received his consent to the adoption of respondent pursuant to said Interlocutory Order.

Thereafter, on its receipt of the report of the consul and on the basis of the entire record, the Greek court entered its final decree on October 17, 1955, declaring respondent the adopted son of Peter Christoff (Peter Ex. 9, 566a-571a, 107a).

Subsequent to the adoption, decedent filed a petition for preference in the immigration quota on behalf of the respondent wherein he referred to respondent as his adopted son (Peter Ex. 8, R. 525a-536a, 52a). Despite this and other efforts (R. 70a-71a), the respondent was not able to enter this country prior to the death of the decedent.

2. An unintentional misstatement appears in petitioner's Statement of the Case. In the third and fourth lines on page 3 of the petition for writ of certiorari, it is stated that the Greek court appointed the Greek consul "as a judge and directed decedent to appear before that Consul. . . .". The Greek court did not, in fact, issue any mandate whatsoever to the decedent. It appointed the consul "judge of introduction" and instructed the consul "to draw the due act (as per art. 133 of the Civil Procedure Code) after receiving the consent of Peter Christoff . . . to the adoption of Constantine Peter Kouzinakis . . .". (Peter Ex. 9, R. 556a, 107a).

The consul's "due act" is set forth in the record (Peter Ex. 7, R. 522a-524a, 50a-51a). It states that decedent appeared before the consul and *first* showed the consul the order of the Greek court. Thereafter decedent declared his consent to and "will for this adoption" and his acceptance of the adoptee "in the rank of pure descendant of his own . . .". (R. 523a).

ARGUMENT

The decision of the Supreme Court of Pennsylvania is clearly right and just. The decedent, deliberately, advisedly, and in good faith submitted himself to the jurisdiction of the Greek court for the purpose of adopting his grandnephew as his son and heir-at-law. In furtherance of his purpose he faithfully carried out every instruction given by his attorneys. Through them he petitioned the Greek court for permission to give his consent to the adoption before the Greek consul in Chicago. When this permission was granted, he travelled to the consulate and there declared his consent to the adoption of the respondent. Subsequent to the rendition of the decree of adoption he considered the respondent as his adopted son and so referred to him in a sworn petition to the immigration authorities.

Now we find the petitioner, after the death of decedent, seeking to deprive respondent of the fruits of that status which decedent labored to create and thus to frustrate decedent's manifest intentions with respect to respondent.

Jurisdiction of this Court is invoked on the ground that the validity of a treaty, the Consular Convention with Greece in 1902, is drawn in question. Yet there is no intimation, directly or by implication, to be found in the opinion of the Pennsylvania Supreme Court to the effect that a consideration of this treaty played any part in its decision. It can not be said that any interpretation or application of the treaty was required on the part of the state court, and none was made. Nor can it be said that the petitioner, an alien living in Czechoslovakia, is entitled to any right or privilege under that treaty which

is here being denied or abridged. Indeed, in view of petitioner's claim that "extra-territorial" jurisdiction over the person of the decedent was exercised, it seems clear that the only person entitled to claim an abridgement of his rights or privileges would be the decedent himself. He, of course, made no such claim during his litetime. Even were he alive today, decedent could hardly now make such a claim, since he deliberately and voluntarily sought out the consul in order to declare before him his consent to the adoption.

The Supreme Court of the Commonwealth of Pennsylvania, having jurisdiction to deal with the devolution of the property of its own citizen-decedents, exhaustively examined the status of the respondent as created under and affected by the laws and judicial processes of his native land. It also duly considered and determined the public policy of the Commonwealth of Pennsylvania applicable in such instances. Having done so, the state court, expressly basing its decision "on the principles of comity", determined to accord recognition to respondent's status of an adopted son. It is, of course, peculiarly the function of a sovereign state to determine whether or not to accord recognition to a foreign decree on such a basis. Since petitioner can point to no federal right or privilege of his that is being denied or abridged, it follows that the action of the state court need not and should not be further reviewed.

Petitioner, simply a disappointed legatee, has not only failed to demonstrate either the justice of his position or a proper federal question for determination, but has also failed to demonstrate how the public interest could be advanced by any decision on the merits that might be rendered by this Court. Even a cursory glance

at the voluminous record as well as the opinion of the Pennsylvania Supreme Court will show that this case was, as every adoption case should and will be, determined on its own peculiar facts after long and careful study by the state courts involved. This being so, it follows that a further opinion in the instant case could afford to courts and litigants no substantial guidance for the future determination of such issues.

I

There is No Basis for Federal Jurisdiction

The decedent, a United States citizen domiciled in Pennsylvania, by means of a written Power of Attorney duly submitted himself to the jurisdiction of a Greek court and there instituted proceedings for the adoption of his grandnephew, a child domiciled within the jurisdiction of that court and the respondent here. No question has been raised, nor can there be any, as to his right to thus invoke the Greek legal processes for such a purpose.

The Greek court in the course of administering its own laws required from the decedent a more formal expression of his consent and intention to adopt. Knowing this and not wishing to travel to Greece to appear in person before the court the decedent asked permission to express his consent and intention before a Greek consul in the United States. (Peter Ex. 9, R. 539a, 107a). Permission was granted, and the decedent went to the consulate and in the presence of the consul formally expressed his consent and intention to adopt. This fact was duly reported by the consul to the Greek court. (Peter Ex. 9, R. 568a, 107a). The latter court then entered a

decree of adoption which conferred upon the respondent, a Greek citizen, the status in Greece of an adopted son of the decedent.

The consul exercised no power, judicial or otherwise, over the person, the property, the rights, or the status of the decedent. He merely performed the purely ministerial act of hearing the decedent declare his intentions with respect to the adoption proceedings and so report to the Greek court. The consul certainly did not make or purport to make any judicial order or decree whatsoever, and even the court to which he sent his report did not make or purport to make a decree binding in any manner beyond its own proper territorial jurisdiction.

How then can petitioner argue that the consul in Chicago "sat as a judge and performed a judicial act over an American citizen"? (Pet. 5). It would appear that petitioner's erroneous conclusion arises from the use of certain words by the Greek court in its Interlocutory Order. (Peter Ex. 9, 555a-556a, 107a). There indeed it was stated that the consul was appointed "judge of introduction" with instructions to certify the decedent's consent after receiving it. However, by no matter what picturesque title the consul was known, the fact remains that all he actually did was perform a purely ministerial act—and a rather insignificant one at that.

In the absence of an exercise by the Greek consul of true judicial jurisdiction over the person of the decedent, the validity of the treaty referred to cannot be said to have been drawn in question, and the jurisdictional ground of the petition for a writ of certiorari is cut from under it.

II

Petitioner Has No Standing

Assuming, solely for the sake of argument, that the Greek consul did in fact exercise judicial jurisdiction over the person of the decedent and thereby exceeded the authority granted him pursuant to the Consular Convention with Greece of 1902, how does this concern petitioner, an alien residing in Czechoslovakia? (R. 321a-323a, 620a). What right or privilege under the terms of that treaty can he claim? None has been even suggested in his petition. It should be obvious without further argument that the Consular Convention with Greece was not intended by either the United States or the Kingdom of Greece to define, create, preserve, or affect the rights of Czechoslovak nationals. This being so it appears self-evident that the petitioner may not here invoke a treaty to which his government is in no way, directly or indirectly, a party.

III

The Pennsylvania Decision Is Supportable Without Reference to Any Federal Question

The Pennsylvania Supreme Court was under no duty to grant recognition to the Greek decree of adoption and so stated in its opinion. (Pet. App. A. 15.) Recognition was granted expressly on the grounds of comity. Nowhere in its opinion did the state court actually decide that the action of the Greek consul in Chicago either was or was not authorized under the terms of the Consular Convention with Greece of 1902. This being so the petitioner is reduced to arguing by implication that the

Pennsylvania Supreme Court tacitly decided that the consular act was valid in order to reach the decision that it would grant recognition to the Greek decree.

While we have urged that the consular act was indeed valid and wholly consistent with the Consular Convention, and while we are confident that the state court also felt this way; the Supreme Court of Pennsylvania could with propriety decide that the consent proceedings in Chicago were technically improper under the Convention, and yet on its review of the whole record and "to insure that justice is done" nonetheless accord recognition to this decree of adoption.

IV

No Question of Public Importance Has Been Presented

Petitioner suggests that because there are some two thousand foreign consuls within the United States, the allegedly unauthorized act of one such consul is to be raised to a question of national importance. He then suggests that the clearly expressed intention of the decedent with regard to the adoption of respondent should now be frustrated, and that the inheritance which in all justice belongs to the respondent should now be taken from him as "a means of acquainting foreign consuls with the laws and policies of the United States . . . ". It would seem that the perpetration of such an injustice upon the respondent would hardly provide a happy lesson in United States law and policy. We suggest that better means are at hand whereby the United States of America can assure that other nations live up to their treaty obligations.

Conclusion.

Petitioner also argues that the decision of the Pennsylvania Supreme Court is in conflict with the immigration laws of the United States. The short answer to this proposition is that this is not an immigration case and the decision of the state court has absolutely nothing to do with the principles and policies of the United States immigration laws.

Finally, petitioner opines that the decision of the Pennsylvania Supreme Court is in conflict with the decisions of the highest courts of other states. The point he overlooks is that in the New Jersey, Virginia, and Florida cases which he cites (Pet. 10-11.) Greek adoptions were denied recognition only after the respective state courts carefully considered the peculiar facts of each case and determined that recognition would not accord with the public policy of the state. In the instant case the Supreme Court of Pennsylvania after a long and searching inquiry determined, also on the peculiar facts of the case, that the adoption in question did not conflict with the public policy of the Commonwealth and that recognition should therefore be granted to the decree on the principles of comity.

CONCLUSION

The petition for writ of certiorari should be denied on the ground of lack of jurisdiction. Conceding arguendo that this Honorable Court has jurisdiction, the petition should be denied because this case does not present a substantial federal question which merits review.

Respectfully submitted,

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